

Message

From: Miles, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C27D6E7B72E48508EF8AE5768CCAAD3-JMILES]
Sent: 2/21/2019 5:14:34 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]
CC: Holmes, Carol [Holmes.Carol@epa.gov]; Presler, Amos [presler.amos@epa.gov]; Baney, Tony [Baney.Tony@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Saenz, Diana [Saenz.Diana@epa.gov]; Gardner, Geraldine [Gardner.Geraldine@epa.gov]
BCC: Miles, James [miles.james@epa.gov]
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]
Attachments: ENV_DEFENSE-#862133-v4-Hazelton__DRAFT_BRIEF.DOCX; Petitioner's Response to Jurisdictional Issues.pdf

Susan –

Please find attached the briefs on the Third Circuit's jurisdiction in the matter of Hazelton Creek. Our OECA attorney is out of the office this week, but our technical expert is available to answer any questions you might have.

James

From: Miles, James
Sent: Wednesday, February 20, 2019 2:27 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Holmes, Carol <Holmes.Carol@epa.gov>; Presler, Amos <presler.amos@epa.gov>; Baney, Tony <Baney.Tony@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Gardner, Geraldine <Gardner.Geraldine@epa.gov>
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Hi Susan,

We are updating you on the status of the enforcement matter concerning Hazelton Creek Properties, Moosic, in Pennsylvania. OGC discussed the case with OCSPP this morning, and Alex Dunn has a call scheduled with the Region 3 RA this afternoon at 4pm to discuss it as well. It is our understanding that you will be invited to participate in that call.

Procedural Status

You'll recall that Hazelton petitioned the US Court of Appeals for the Third Circuit for review of a R3 Notice of Noncompliance (and follow-up letter) regarding EPA PCB regulations and fill material containing PCBs at concentrations above 2ppm. The court requested briefs from both sides regarding the court's jurisdiction over the NON and letter. The deadline for the brief was postponed by the Third Circuit due to the shutdown. OGC informs us that the Third Circuit has not yet set a new filing deadline.

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Substantive Background: use versus disposal of PCBs:

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Attorney Client / Ex. 5

Next Steps

Attorney Client / Ex. 5

OGC provided some helpful regional briefing material (attached). We wish we could have provided you more background in advance of this afternoon, but OCE staff can be brief you further at tomorrow's OCE Weekly.

James Miles
Acting Associate Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
William Jefferson Clinton Bldg., South, Rm. 4111A
1200 Constitution Ave., NW
Washington, DC 20460
202.564.5161
miles.james@epa.gov

Begin forwarded message:

From: "Saenz, Diana" <Saenz.Diana@epa.gov>
Date: December 20, 2018 at 6:28:22 PM EST
To: "Bodine, Susan" <bodine.susan@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Traylor, Patrick" <traylor.patrick@epa.gov>, "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Sullivan, Greg" <Sullivan.Greg@epa.gov>
Cc: "Miles, James" <miles.james@epa.gov>, "Werner, Jacqueline" <Werner.Jacqueline@epa.gov>, "Presler, Amos" <presler.amos@epa.gov>
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Susan – Here is a procedural update on the Hazelton Creek filing [TSCA/ PCBs]:

Hazelton Creek Properties, Moosic, Pennsylvania, filed a petition dated 12/5/18 for review with the U.S. Court of Appeals for the Third Circuit. The filing requests review of what the petitioner labels a “final agency action” in the form of a Notice of Noncompliance and Information Request.

The scheduling order required a government response by Thursday, December 20th, but DOJ filed an unopposed motion for extension of time to respond by January 8th. The motion has not yet been granted, but the clerk advised DOJ to proceed as if it will be granted.

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Prior to the filing, the region met with attorneys for Hazelton. The Region also received a letter in response to the NON, detailing the petitioner’s potential arguments/defenses. Bethany Fisher is the OGC attorney and Cheryl Jamieson is the regional attorney. OGC has also secured a DOJ attorney.

We will provide you with more information in early January and will be available if you would like to discuss this during the first week of January.

Thank you,
Diana

Diana J. Saenz
Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement/ U.S. EPA
1200 Pennsylvania Ave., N.W.
Mailcode 2249A
Washington, D.C. 20460
Phone: (202) 564-4209
Fax: (202) 564-0022
Saenz.Diana@epa.gov

From: Sullivan, Greg
Sent: Monday, December 10, 2018 11:45 AM
To: Saenz, Diana <Saenz.Diana@epa.gov>; Miles, James <miles.james@epa.gov>; Werner, Jacqueline <Werner.Jacqueline@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: FW: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Please reach out to region 3.

From: Bodine, Susan
Sent: Monday, December 10, 2018 10:12 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>
Subject: FW: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Attorney Client / Ex. 5

Susan

From: Beck, Nancy

Sent: Monday, December 10, 2018 8:00 AM

To: Bodine, Susan <bodine.susan@epa.gov>; Wright, Peter <wright.peter@epa.gov>

Subject: FW: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

FYI

Nancy B. Beck, Ph.D., DABT

Deputy Assistant Administrator, OCSPP

P: 202-564-1273

beck.nancy@epa.gov

From: Grant, Brian

Sent: Monday, December 10, 2018 7:18 AM

To: OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Morris, Jeff <Morris.Jeff@epa.gov>; Mottley, Tanya <Mottley.Tanya@epa.gov>

Cc: Cole, Joseph E. <cole.josephe@epa.gov>; Fisher, Bethany <fisher.bethany@epa.gov>

Subject: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

On December 5, Hazelton Creek Properties, located in Moosic, PA, filed a petition for review under TSCA section 19(a) in the US Court of Appeals for the Third Circuit challenging a Notice of Noncompliance (NON) issued by EPA Region 3. The NON asserts that placement of PCB materials on the site property at levels over 2 ppm, in compliance with a Pennsylvania State permit and Pennsylvania policy, constitutes a violation of the EPA TSCA PCB regulations, and cautions that further receipt by the company of such materials may result in EPA enforcement. The Notice states that "No corrective action is necessary by your company at this time".

We will contact DOJ to have an attorney assigned and work with Region 3 ORC on this. Please let us know if you have any questions.

Brian Grant

EPA Office of General Counsel

Pesticides and Toxic Substance Law Office

202-564-5503